



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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August 17, 2015

Jennifer Lee
Assistant City Attorney
City of Ventura
501 Poli Street
Ventura, CA 93002

Re: Your Request for Advice
Our File No. A-15-130

Dear Ms. Lee:

This letter responds to your request for advice on behalf of Ventura City Councilmember Christy Weir regarding her duties under the conflict of interest provisions of the Political Reform Act (the "Act").¹

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

QUESTION

Do the Act's conflict of interest provisions require Councilmember Weir to disqualify herself from participating in decisions relating to a new residential development located approximately 722 feet from real property which she owns and uses as her primary residence and rents out to tenants?

CONCLUSION

Based on the scope of the entire project (including the development and open space) it is reasonably foreseeable that the government decisions will have a material financial effect on the councilmember's property.

FACTS

A developer has acquired from a private family forty acres of vacant property in the hillsides within the City. It intends to build fifty-five single and two-story luxury homes in a development to

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

be known as Mariano Ranch. Each home, ranging from 3,750 to 4,500 square feet on approximately 11,000 square foot lots, will likely be sold between one to two million dollars.

The project will be situated above existing residential development, which lies to the south. Contiguous to the north of the project site, the developer has also acquired roughly 175 acres of undeveloped land, which will be dedicated to the City as open space with some trail development. Though the developer has just recently submitted his application with the City, with the earliest hearing set for September, the project has already generated significant public interest and controversy because it involves development of the hillsides.

In connection with the development application, the developers stated:

- *Policy 1B: Increase the area of open space protected from development impacts.* The Project will help the City achieve this policy because the Project is planned in a clustered fashion on approximately 40 acres at the southern portion of the 215 acre Project Site, and will guarantee no disturbance to a majority of the Project Site while designating approximately 175 undisturbed acres as permanent open space that will remain undeveloped in perpetuity and available for conservation and recreation. It is notable that the proposed open space is currently designated as residential under the General Plan (Neighborhood Low) and Zoning Code (R-1-7). Accordingly, any public access that currently occurs is on private, residentially designated property that could be developed at any time. The Specific Plan would designate this property as open space and would provide trailhead and parking for public access, creating a new opportunity for permanent conservation and recreation that wouldn't otherwise be available.
- The main access to the Project is proposed via improvements to Hall Canyon Road with emergency access provided at Lincoln Drive. This proposal is based on the narrow nature of the current road system in the Hobson Heights neighborhood along with the existence of many single family homes there that would be impacted by locating the main access to the Project at Lincoln Drive. Instead, the Project proposes to fully improve Hall Canyon Road to provide a unique sense of arrival for the Project and to orient circulation along a route where there are far fewer existing residences. No Project access from Erburu is proposed other than for underground utilities and infrastructure. New trips are preliminarily estimated at 41 AM peak hour and 55 PM peak hour trips per day . . .”

Councilmember Weir owns her personal residence, which is approximately 722 feet south of the nearest boundary of the proposed development. Her property lies within the Midtown community section of the City and is a one-story residential home that has a market value greater than \$2,000. The property includes a detached second dwelling unit, which she rents out to a paying tenant. The area immediately surrounding her parcel on all four sides is fully developed residential property. You stated that:

- The two roads that will serve as the primary and secondary egress and ingress routes to the project site will be improved, but are not necessary or ordinary means to access City Councilmember Weir's property.

- Construction of the project may temporarily affect traffic levels, noise levels, and/or air quality for City Councilmember Weir's property, however, these disturbances are not anticipated to be substantial.
- It is not foreseeable that the project will, in any way, impact her ocean views or privacy since her property, though located in the hillsides, is situated at a lower position than the proposed development. It is possible that views of the hillside facing the upper hill could be impacted, but in a minor way.
- Though uncertain at this stage, City Councilmember Weir's property may incidentally benefit from improvements to or construction of systems delivering water, sewer, storm drainage service, and/or police and fire facilities.
- Moreover, an underground utility district may be established, to which the councilmember would be required to contribute. However, these benefits and burdens shall be shared by the surrounding community generally.
- With respect to the rental unit located on the City Councilmember's property, though the property may be impacted by some increased traffic, pollution, or noise, these disturbances are anticipated to be minimal for the official's property.

ANALYSIS

Section 87100 prohibits any state or local public official from making, participating in making, or using his or her official position to influence a government decision in which the official has a financial interest specified in Section 87103. A public official has a "financial interest" in a government decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the public official's interests. (Section 87103.) Of the interests recognized under the Act, the interests you have described are an interest in real property and an interest in a source of income (the tenant). (Section 87103(b) and (c).)

Foreseeability

For a financial interest that is not explicitly involved in a decision (such as the councilmember's residence and the tenant), Regulation 18701(b) provides:

"A financial effect need not be likely to be considered reasonably foreseeable. In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official's control, it is not reasonably foreseeable."

Materiality: Real Property

Recently revised Regulation 18702.2(a) provides a list of circumstances under which the reasonably foreseeable financial effect of a governmental decision on real property in which an

official has an interest is material. As relevant to your facts, the financial effect will be material if the decisions:

1. “Would impose, repeal, or modify any taxes, fees, or assessments that apply to the parcel.” (Regulation 18702.2(a)(3).)
2. “Would change the character of the parcel of real property by substantially altering traffic levels or intensity of use, including parking, of property surrounding the official’s real property parcel, the view, privacy, noise levels, or air quality, including odors, or any other factors that would affect the market value of the real property parcel in which the official has a financial interest.” (Regulation 18702.2(a)(10).)
3. “Would cause a reasonably prudent person, using due care and consideration under the circumstances, to believe that the governmental decision was of such a nature that its reasonably foreseeable effect would influence the market value of the official's property.” (Regulation 18702.2(a)(12).)

You stated that an underground utility district may be established, to which the councilmember would be required to contribute. However, it does not appear that establishment of an assessment district is a part of the current proposal. Thus, the effect of the decision is not material based on Regulation 18702.2(a)(3).²

You also stated that the two roads that will serve as the primary and secondary egress and ingress routes to the project site will be improved, but are not necessary or ordinary means to access City Councilmember Weir’s property. The application materials specify that the main access to the Project is proposed via improvements to Hall Canyon Road with emergency access provided at Lincoln Drive. New trips on these roads are preliminarily estimated at 41 AM peak hour and 55 PM peak hour trips per day. Neither the application materials nor the April 15, 2015 Mariano Ranch Residential Development Focused Traffic Assessment prepared by Urban Crossroads, Inc. identify traffic impacts on the streets adjacent to the councilmember’s property.

Moreover, with respect to the other factors, while an EIR has yet to be prepared, it does not appear that the councilmember’s neighborhood will be especially impacted beyond temporarily affects on traffic levels, noise levels, and/or air quality during construction of the 55 units. Thus, the character of the councilmember’s neighborhood would not be materially affected under this standard.

² Note that if a proposed assessment district were to become part of the process, the effect will be considered material pursuant to this provision. The effects of other decisions would not be material under this provision. Decisions that are interlinked to a decision in which the councilmember has a conflict of interest is also disqualifying for the councilmember. Thus, for example, if the only way the project could be approved is with the imposition of the assessment on the councilmember’s property, then not only would the councilmember have a conflict of interest with respect to the assessment decision, but will also have a conflict of interest in decisions affecting the overall project since these decisions are interlinked. (Regulation 18706.)

However, while the magnitude of the development is modest (55 homes), the subject of the governmental decision will actually cover forty-acres of currently vacant property in the hillsides within the City. According to the application, the project will “guarantee no disturbance to a majority of the Project Site while designating approximately 175 undisturbed acres as permanent open space that will remain undeveloped in perpetuity and available for conservation and recreation.”

“It is notable that the proposed open space is currently designated as residential under the General Plan (Neighborhood Low) and Zoning Code (R-1-7). Accordingly, any public access that currently occurs is on private, residentially designated property that could be developed at any time. The Specific Plan would designate this property as open space . . .”

This is a significant change to a large area near the councilmember’s home and would cause a reasonably prudent person to be concerned that the governmental decision was of such a nature that its reasonably foreseeable effect would influence the market value of the official's property.

Consequently, the councilmember has a conflict of interest and may not participate in the decision.³ Please note that when a public official who holds an office specified in Section 87200 (such as a councilmember) has a conflict of interest in a decision noticed at a public meeting, then he or she must: (1) immediately prior to the discussion of the item, orally identify each type of economic interest involved in the decision as well as details of the economic interest on the record of the meeting; (2) recuse himself or herself, and (3) leave the room for the duration of the discussion and/or vote on the item. (Section 87105; Regulation 18707.)

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Hyla P. Wagner
General Counsel

/s/

By: John W. Wallace
Assistant General Counsel,
Legal Division

JWW:jgl

³ Because we have already concluded a conflict of interest exists with respect to the councilmember’s property, we need not analyze her other interests. We would note that Regulation 18702.3 provides that the test in Regulation 18702.2(b) applies to the councilmember’s tenant. Regulation 18702.2(b) provides that effect on a leasehold of a source of income is material if the decision will: (1) change the termination date of the lease; (2) increase or decrease the potential rental value of the property; (3) increase or decrease the rental value of the property, and the official has a right to sublease the property; (4) change the official's actual or legally allowable use of the real property; or (5) impact the official's use and enjoyment of the real property.